



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 16, 2004

Ms. Rosemary M. Marin
Scott, Hulse, Marshall, Feuille, Finger & Thurmond, P.C.
201 East Main Drive, Suite 1100
El Paso, Texas 79901

OR2004-9726

Dear Ms. Marin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 211992.

The Yselta Independent School District ("YISD"), which you represent, received two requests for seven categories of information pertaining to request for proposals ("RFP") #24-322-034CSP. You state that you have released three of the requested categories of information, but you claim that the submitted information is excepted from disclosure under sections 552.103 and 552.104 of the Government Code. Additionally, you provide documentation showing that you have notified twenty-two interested third parties of YISD's receipt of these requests for information pursuant to section 552.305 of the Government Code.¹ See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act ("Act") in certain circumstances). We have received

¹ The interested third parties you notified are as follows: Magellan Behavioral Health, Inc.; Integrity Employee Assistance; MERCER Human Resource Consulting; Wellness WORKS; WEB-TPA Employer Services, LLC; WageWorks, Inc.; Value Options, Inc.; United Behavioral Health; NCED-MHC, Inc. d/b/a ACCESS EAP; Great-West Life & Annuity Ins. Company; ING Employee Benefits; Community First Health Plans, Inc.; Ceridian Corporation; Blue Cross Blue Shield of Texas; Beech Street Corporation; ComPsych Corporation; Cigna Behavioral Health; Deer Oaks EAP Services; Delta Dental Insurance Company; Denver Reserve Corporation; Educators Mutual Insurance Association; and APS Healthcare Bethesda, Inc.

correspondence from one third party, United Behavioral Health ("UBH"). We have considered all submitted arguments and reviewed the submitted information.

Initially, we must address YISD's obligations under section 552.301 of the Government Code. In accordance with section 552.301(b), a governmental body seeking a ruling from this office must assert the exceptions to disclosure that apply to the requested information no later than the tenth business day after receiving the written request. In addition, pursuant to section 552.301(e), a governmental body receiving a request for information that the governmental body wishes to withhold pursuant to an exception to disclosure is required to submit to this office within fifteen business days of receiving the request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You state that YISD received the present requests for information on August 12, 2004. However, you did not raise section 552.104 as an exception to disclosure until September 3, 2004, and you did not submit the requested information to this office until October 12, 2004. Consequently, you failed to comply with the ten and fifteen business day deadlines in section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released, unless the governmental body demonstrates a compelling reason to withhold the information from disclosure. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 319 (1982). Generally, a governmental body may demonstrate a compelling reason to withhold information by a showing that the information is made confidential by another source of law or affects third party interests. *See* Open Records Decision No. 630 (1994). Sections 552.103 and 552.104 of the Government Code are discretionary exceptions to disclosure that protects the governmental body's interests and may be waived by the governmental body. Thus, sections 552.103 and 552.104 are not compelling reasons to withhold information from the public. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); *see also* Open Records Decision Nos. 592 (1991) (governmental body may waive section 552.104), 522 (1989) (discretionary exceptions in general). Accordingly, YISD may not withhold any portion of the submitted information under section 552.103 or 552.104 of the Government Code.

A compelling interest can be demonstrated, however, where third party interests are at stake. Open Records Decision No. 150 at 2 (1977). UBH claims that the requested audiotapes are excepted from disclosure pursuant to section 552.104 of the Government Code. We note,

however, that upon review of the submitted audiotapes, we did not find any information concerning UBH. Therefore, we do not consider UBH's arguments against disclosure.

Finally, we note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this decision, the following third parties have not submitted to this office any reasons explaining why the submitted information should not be released: Magellan Behavioral Health, Inc.; Integrity Employee Assistance; MERCER Human Resource Consulting; Wellness WORKS; WEB-TPA Employer Services LLC; WageWorks, Inc.; Value Options, Inc; NCED-MHC, Inc. d/b/a ACCESS EAP; Great-West Life & Annuity Ins. Company; ING Employee Benefits; Community First Health Plans, Inc.; Ceridian Corporation; Blue Cross Blue Shield of Texas; Beech Street Corporation; ComPsych Corporation; Cigna Behavioral Health; Deer Oaks EAP Services; Delta Dental Insurance Company; Denver Reserve Corporation; Educators Mutual Insurance Association; and APS Healthcare Bethesda, Inc. Therefore, these parties have provided us with no basis to conclude that they have a protected proprietary interest in any of the submitted information. See, e.g., Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Accordingly, the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

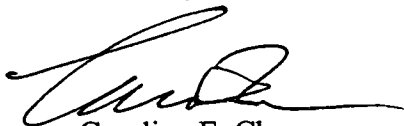
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 211992

Enc. Submitted documents

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